

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-SIX**

**TOWER AUTOMOTIVE  
PRODUCTS COMPANY, INC. <sup>1</sup>**

Employer

and

**Case 26-RD-1080**

**BOB JOHNSON**

Petitioner

and

**UNITED STEELWORKERS  
OF AMERICA, AFL-CIO-CLC**

Union

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

The Employer, Tower Automotive Products Company, Inc., operates a facility in Milan, Tennessee where it manufactures automotive products. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union as the bargaining representative of the Employer's regular full-time and regular part-time hourly production and maintenance employees, including quality control, shipping, receiving, and material handling employees. These employees are covered by a collective-bargaining agreement that is effective from April 1, 2000 to March 31,

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<sup>1</sup> The Employer's name appears as corrected at the hearing.

2004. Following a hearing before a hearing officer of the Board, the Employer filed a brief with me. No brief was submitted by the Union.

The sole issue presented at the hearing is whether the collective-bargaining agreement serves to bar the petition and, therefore, precludes conducting an election. The Union asserts that the agreement should bar the petition. In support of this claim, the Union argues that the Board's contract bar doctrine should be extended from 3 to 4 years so as to cover the length of the parties' agreement. Contrarily, the Employer contends that the agreement does not constitute a bar to the petition because there is no basis for modifying the long-standing Board policy.

I have considered the evidence adduced at the hearing and the arguments advanced by the parties. As discussed below, I have concluded that the agreement does not bar the petition because the petition was timely filed. Further, there is no legal basis for me to extend the contract bar rule as the Union requests. Accordingly, I have directed an election in a unit consisting of approximately 349 employees.

The resolution of this matter is governed by the Board's contract bar doctrine. Therefore, in the section that follows, I will set forth the Board's contract bar rules and examine their applicability to the facts underlying this case.

### **I. LEGAL STANDARDS AND ANALYSIS**

The Board announced its contract bar doctrine in **General Cable Corp.**, 139 NLRB 1123, 1125 (1962). Pursuant to that doctrine, an existing and valid collective-bargaining agreement will bar an election petition for that portion of the

contract that does not exceed 3 years. Further, a collective-bargaining agreement with a duration in excess of 3 years is treated for bar purposes as a 3-year agreement and will preclude an election for only its initial 3 years. **Id.** In order for a petition to be timely, it must be filed during the 60 to 90 day period prior to the third anniversary of the agreement. **Leonard Wholesale Meats, Inc.**, 136 NLRB 1000 (1962).

In this case, the Employer and the Union executed a 4-year collective-bargaining agreement effective from April 1, 2000 to March 31, 2004. There is no evidence indicating that the agreement has either been extended or renewed. Because the agreement has a fixed term in excess of 3 years, I am compelled to treat it as a 3-year contract pursuant to **General Cable Corp.** Therefore, for contract bar purposes, the third anniversary date of the agreement would fall on April 1, 2003 and a petition filed during the period of January 1, 2003 to January 31, 2003 would be considered timely under the precedent established by **Leonard Wholesale Meats, Inc.**

Here, the uncontroverted evidence shows that the petition was filed on January 10, 2003, 80 days prior to the third anniversary of the agreement. Thus, the petition filed in this matter is timely under the Board's contract bar policy. While the Union has argued that an extension of the policy from 3 to 4 years would operate to bar the petition, this argument has previously been considered and most recently rejected by the Board in **Dobbs International Services**, 323 NLRB 1159 (1997). Accordingly, I find that the 3-year rule announced in **General Cable**

**Corp.** is still applicable. I will, therefore, direct an election in the petitioned-for unit.

## II. CONCLUSION AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Union claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All regular full-time and regular part-time hourly production and maintenance employees, including quality control, shipping, receiving, and material handling employees employed by the Employer at its facility located at 13901 Telecom Drive, Milan, Tennessee.

**EXCLUDED:** All office clerical employees, professional employees, temporary employees, team leaders, guards, and supervisors as defined in the Act.

### **III. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Steelworkers of America, AFL-CIO-CLC. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or

reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **June 20, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting

aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (901) 544-0008. Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **IV. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **June 27, 2003**. The request may **not** be filed by facsimile.

Dated at Memphis, Tennessee, this 13<sup>th</sup> day of June 2003.

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Ronald K. Hooks, Regional Director  
Region 26, National Labor Relations  
Board  
1407 Union Avenue, Suite 800  
Memphis, TN 38104-3627

**Classification Index**

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347-4010-2000  
347-4010-2014